

## Customs & Global Trade Updates

December 2023

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### This update highlights the following matters:

- ▶ Decree amending the special preferential import tariff schedule (SPITS) under the Regional Comprehensive Economics Partnership Agreement (the RCEP) for the period 2022-2027
- ▶ The National Assembly approved Project of Resolution on extending the reduction of Value-Added Tax (VAT) rate until 30 June 2024
- ▶ Feedbacks on the Draft Decree amending Decree 08/2015/NĐ-CP dated 21 January 2015 (Decree 08) concerning the on-the-spot (OTS) import-export customs procedures
- ▶ Clarifications for the purpose of implementing Circular No. 33/2023/TT-BTC dated 31 May 2023 of the Ministry of Finance (MoF) regarding the determination of origin of imports and exports (Circular 33)
- ▶ Official Letters (OLs) provide guidance on:
  - ▶ Customs procedures for goods leased, borrowed by Vietnamese enterprises in form of temporarily import to re-export
  - ▶ Duty exemption for goods imported for export production
  - ▶ Issuance of Certificate of Origin (C/O) for goods stored in bonded warehouse
  - ▶ VAT on goods imported then subsequently returned/re-exported to foreign supplier

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## **Decree on amendments of the SPITS under the RCEP for the period 2022-2027**

On 1 December 2023, the Government issued Decree No. 84/2023/ND-CP (Decree 84) amending some articles of Decree No. 129/2020/ND-CP dated 30 December 2022 of the Government on the SPITS of Vietnam under the RCEP period 2022-2027 (Decree 129).

Some notable points of Decree 84 are as follows:

- ▶ Supplementing point a, Section 3, Article 3 of Decree 129 prescribing the effective period of the SPITS 2022 under the RCEP applicable for the Republic of the Union of Myanmar (Myanmar) from 4 March 2022 to the end of 31 December 2022.
- ▶ Supplementing point b, Section 3, Article 3 of Decree 129 regulating the effective period of the SPITS 2023 under the RCEP, where:
  - ▶ For Myanmar, the effective period starts from 1 January 2023 to the end of 31 December 2023.
  - ▶ For the Republic of the Philippines (the Philippines), the effective period starts from 2 June 2023 to the end of 31 December 2023.
- ▶ Including Myanmar and the Philippines to the list of countries who are members of RCEP entitled to the SPITS of Vietnam.
- ▶ Supplementing guidance on handling overpaid taxes of goods imported from Myanmar and Philippines that satisfied the conditions of enjoying RCEP tariff rates as prescribed under Decree 84 and Decree 129 and had paid more import duty before Decree 84 takes effective. In specific, broadening the scope of application to:
  - ▶ Goods imported from Myanmar, of which customs declaration was registered after 4 March 2022.
  - ▶ Goods imported from the Philippines, of which customs declaration was registered after 2 June 2023.

For details, please see the Decree 84.

## **The National Assembly approved the Project of Resolution on extending the reduction of VAT rate until 30 June 2024**

On 29 November 2023, at the sixth meeting of the National Assembly tenure XV, the National Assembly issued Resolution No. 110/2023/QH15 (Resolution 110) approving several draft Laws and Resolutions. In which, the approval on the draft resolution on extending the reduction of VAT rate for until 30 June 2024 is stated in Article 10.

Accordingly, the National Assembly approved the proposal of continuing the reduction of VAT rate applied to group of goods, services prescribed at point a Section 1.1 Article 3 of Resolution No. 43/2022/QH15 (Resolution 43) dated 11 January 2022 of the National Assembly on fiscal and monetary policies for supporting socio-economic recovery and development program from 1 January 2024 to 30 June 2024.

Specifically, groups of commodities and services that are subjecting to VAT rate of 10% shall continue to be reduced by 2%, except for commodities and services of following groups:

- ▶ Tele-communications, information technology
- ▶ Finance, banking, securities, and insurance activities
- ▶ Real estate
- ▶ Production of metals and products of prefabricated metals
- ▶ Mining industry (excluding coal mining activities), production of coke, refined petroleum
- ▶ Production of chemical products
- ▶ Goods and services subject to special consumption tax

For details, see the Resolution 43.

#### **Feedbacks on the Draft Decree amending Decree 08 concerning the OTS import-export customs procedures**

On 4 December 2023, the Ministry of Planning and Investment (MoPI) issues OL No.10107/BKDT-TCTT (OL 10107) providing feedbacks on the draft Decree amending Decree 08 promulgating details and resolutions on the implementation of Law on Customs concerning customs procedures, customs inspection, customs administration and control (Decree 08).

The MoF had previously presented reasons for abolishing Article 35 of Decree 08 is to simplify the administrative procedures, save time and reduce expense, facilitate trading activities of foreign traders in general and of Vietnamese enterprises as well as to simplify procedures and human resources of competent authorities. In responses, the MoPI states as follows:

- ▶ The abolishment of point c, Sections 1, Article 35 of Decree 08 shall increase the expenses, and cash outflows on VAT. Given the foreign traders have to pay import duty imposed on imported materials that are not eligible for import duty exemption, it results in an increase of production costs, lowering of competitiveness and affect the business plan on investment expansion. Thus, the MoF should consider the opinions of Business Associations (BAs), foreign investors, community of foreign direct investment (FDI)enterprises and additionally assess the impacts of the abolishment of Article 35, Decree 08 on the business production activities of enterprises on a quantitative basis.
- ▶ Per current regulations, which is Section 3, Article 2, Law on Import-Export Duty, OTS imported goods and OTS exported goods are subject to import duties, export duties respectively. Hence, the MoPI suggested the MoF to justify whether the abolishment of Article 35 of Decree 08 shall lead to incoherence of regulations or not.
- ▶ All proposals of eliminating OTS import-export customs procedures as prescribed at OL No.10961/BTC-TCHQ dated 10 October 2023 of the MoF should be further analysed in term of impact, feasibility, variance, pros and cons upon implementation.

For details, please see the OL 10107.

## Clarifications for the purpose of implementing Circular 33

On 11 December 2023, the General Department of Customs (GDC) issued Official Letter 6372/TCHQ-GSQL (OL 6372) providing clarifications on C/O-related matters during the implementation of Circular 33, which covers the following points:

- ▶ Regarding the submission timeline of C/O as specified in Article 12 of Circular 33:

Goods listed under Appendix V of Circular 33, which pose risks to social safety, community health or environment, need to be monitored. Accordingly, upon importation, the C/O must be submitted at the time of customs clearance, otherwise such goods cannot obtain customs clearance and shall be handled in accordance with regulations.
- ▶ Regarding the validation of C/O information provided on websites of competent authorities of exporting countries as specified in Clause 4, Article 12 and Clause 1, Article 15 in Circular 33, in particular:
  - ▶ If the C/O is issued via Vietnam National Single Window, ASEAN Single Window or website provided by competent authorities of exporting countries, the customs authority will base on information in C/O declared in customs declaration to reconcile and validate the C/O to determine the applicable preferential duty rate. Hard copy of C/O is not required in this case.
  - ▶ If the website, where competent authorities of exporting countries issue C/O, does not provide sufficient information for the customs authority to validate the C/O, the customs authority has to additionally reconcile and inspect the digital C/O or scanned copy of the paper C/O, which is submitted via e-customs system together with other supporting documents of customs dossier and physical goods inspection result (if any) to determine the validity of C/O.
- ▶ Regarding the procedures to reject submitted C/O under the CPTPP:
  - ▶ If there is sufficient factor to determine submitted C/O is invalid, the customs authority will reject the C/O at customs clearance stage.
  - ▶ If there is insufficient factor to reject the submitted C/O during customs clearance stage, the customs authority shall follow the verification procedure as prescribed in Article 19, Circular 33. Upon obtaining the verification result, if the submitted C/O is not eligible for claiming the preferential tariff, the GDC will notify the exporter or the manufacturer or the competent authority of exporting country to supplement information in relation to the origin of goods within 90 days from the date the GDC sends the notification. The customs authority will follow procedures to reject submitted C/O if the provided information is inappropriate.
- ▶ Regarding the validation of C/O for imported coal to determine whether such goods are eligible for applying special preferential duty rate under applicable Free Trade Agreement (FTA):

During the validation process, if a C/O is issued via National Single Window, ASEAN Single Window or website provided by competent authorities of exporting countries, or submitted by customs declarant via e-customs system, if such C/O meets minimum information requirements as specified in Clause 3, Article 15 of Circular 33, the imported goods shall be eligible for preferential tariff or normal tariff and granted customs clearance.

- ▶ Regarding the deduction of import quantity in the C/O as prescribed in Article 22 of Circular 33: for pack of goods sharing mutual sales contract and commercial invoice, but imported in multiple shipments, the C/O shall be used for drafting deduction of import quantity sheet.
- ▶ If there is a credit institution guarantees tax variance amount, the procedures under Clause 1, Clause 6 Article 12 of Circular 33 shall be adopted.

Please see the OL 6372 for further details.

Some guidance provided for under the form of OLs of the customs authorities:

No.	Subject	Content
6087/TCHQ-GSQL Dated 24 November 2023	Customs procedures for goods leased, borrowed by Vietnamese enterprises in the form of temporary import for re-export	<p>For goods which Vietnamese enterprises leased by or borrowed from foreign enterprises in the form of temporary import for re-export, if the temporary importation duration is expired, and the Vietnamese enterprise does not re-export but delivers to another enterprise in Vietnam that is designated by the foreign owner, the customs procedure in this case is as follows:</p> <ul style="list-style-type: none"> <li>▶ For machinery and equipment, construction equipment and vehicles, moulds, samples leased by or borrowed from foreign enterprises by Vietnamese enterprises for production, construction, installation, project implementation, testing, which have been temporarily imported into Vietnam, when the leasing or borrowing duration expire these items must be re-exported to foreign enterprises according to Clause 1, Article 1 of Decree 69/2018/NĐ-CP dated 15 May 2018 of the Government on the provision of Law on Foreign Trade Management.</li> <li>▶ The OTS import-export customs procedure is not applied in the case goods temporarily imported for re-exported are delivered to</li> </ul>

No.	Subject	Content
		<p>another enterprise in Vietnam that is designated by the foreign owner.</p> <p>The guidance prescribed herein OL 6078 shall replace previous OLs providing guidance on this regard.</p>
<p>5980/TCHQ-TXNK Dated 17 November 2023</p>	<p>Duty exemption for goods imported for export production</p>	<ul style="list-style-type: none"> <li>▶ The factors to determine duty exemption applicable for goods imported for export production is specified in Section 2, Article 12, Decree 134/2016/NĐ-CP dated 1 September 2016 amended in Section 6, Article 1, Decree 18/2021/NĐ-CP dated 11 March 2021.</li> <li>▶ If company (i) does not have the ownership or rights of use towards export production facilities, machinery, and equipment in the territory of Vietnam, or (ii) handover all the imported goods to another outsourcing facility for processing all stages of the production then receive the finished goods for exportation, it does not meet the factors in determining duty exemption per the above regulations.</li> </ul>
<p>1000/XNK-XXHH Dated 28 November 2023</p>	<p>C/O issuance for goods stored in bonded warehouse</p>	<p>For domestically manufactured goods:</p> <ul style="list-style-type: none"> <li>▶ For goods which are domestically manufactured then sent into bonded warehouse waiting for exportation, the issuing authority considers issuing the preferential C/O if such goods qualify for rules of origin and the consignee is a foreign trader as per prescribed under applicable FTA where Vietnam is a member.</li> </ul> <p>For goods originating from overseas:</p> <ul style="list-style-type: none"> <li>▶ If goods originating from an FTA member country imported into bonded warehouse in Vietnam by a foreign trader, then subsequently re-exported to another member country of the same FTA, the foreign trader can authorise its</li> </ul>

No.	Subject	Content
		<p>representative in Vietnam to request for the issuance of back-to-back C/O.</p> <ul style="list-style-type: none"> <li>▶ The authorization must be made in written form, which clearly defines the scope and duration of authorization.</li> <li>▶ Regarding content on the back-to-back C/O: <ul style="list-style-type: none"> <li>▶ On behalf of the foreign trader, the authorized personnel can sign-off the back-to-back C/O issuance request form but must not be shown as the exporter in box one of the C/O.</li> <li>▶ The C/O must clearly state that the Vietnamese trader is authorized, on behalf of the foreign enterprise.</li> <li>▶ The foreign trader, which is the exporter, declared in box one of the back-to-back C/O issued by Vietnam competent authority and the foreign trader, which is the importer, declared in box two in the C/O issued by the first exporting country are foreign enterprises and must have legal presence at member countries of applicable FTA.</li> </ul> </li> </ul>
<p>6068/TCHQ-TXNK Dated 23 November 2023</p>	<p>Handling of the VAT on goods imported then subsequently returned/re-exported to overseas supplier</p>	<ul style="list-style-type: none"> <li>▶ If companies have paid VAT for imported goods, but subsequently re-export such goods to return to overseas supplier via export customs declarations made from 1 February 2018 onwards, the customs authority will handle such overpaid tax amount.</li> <li>▶ The overpaid VAT amount shall be refunded following Article 132 in 38/2015/TT-BTC amended in Circular 39/2018/TT-BTC of the MoF.</li> <li>▶ The overpaid VAT amount shall be handled simultaneously with the overpaid import duty (if any).</li> </ul>

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